

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

United States Courts  
Southern District of Texas  
FILED

JAN 22 2024

Gustavo Gomez Valenzuela  
Petitioner.

Nathan Ochener, Clerk of Court

V.

United States Of America,  
Respondent.

Case No. 4:20-cr-00026

Crim. Action No. H-20-26-14

Civil Action No. H-23-4390

Before Honorable Judge

Lee H. Rosenthal

United States District Judge

GUSTAVO GOMEZ VALENZUELA'S RESPONSE SHOWING  
CAUSE WHY HIS §2255 MOTION SHOULD NOT BE DISMISSED  
AS UNTIMELY.

Gustavo Gomez Valenzuela, has recently filed his §2255 motion without the assistance of counsel. The Court questions "Why his petition should not be dismissed as barred by limitations." Thus Gustavo Gomez Valenzuela files this response showing cause," particularizing two clear and convincing issues showing why his motion should not be dismissed. Gustavo Gomez Valenzuela, shows that:

A) New reliable evidence exists that was not presented in open court, and that it is more likely than not that no reasonable juror would have convicted Gustavo Gomez Valenzuela in light of the new evidence. See *Schlup v. Delo*, 513 U.S. 298, 324 and 327 (1995).

B) The timeliness standard of 28 U.S.C. § 2255(f) cannot be applied as controlling concerning claims of ineffective assistance of counsel.

Gustavo Gomez Valenzuela, provides a clarifying explanation for each claim in turn.

A) New reliable evidence exists that was not presented in open court, and that it is more likely than not that no reasonable juror would have convicted Gustavo Gomez Valenzuela in light of the new evidence. See *Schlup v. Delo*, 513 U.S. 298, 324 and 327 (1995).

1] On March 8, 2020 Gustavo Gomez Valenzuela approximate 4 or 5 am was arrested with luxury of violence, in that time the agent, throw (knock down) that front door and violently take me, then second day when I was arrested I go to the court, that judge ask to prosecutor if somebody give me that order of execution, they say not.

2] On March 10, 2010 Gustavo Gomez Valenzuela, receive that arrest warrant. That time not body give me that miranda rights. (2 of 7)

3) Gustavo Gomez Valenzuela's Case represents the threat of incarceration that every law enforcement officer faces when performing his duty. When an officer makes an arrest, the bright line between his official duty and depriving someone of civil rights, is marked by probable cause.

4) That officer found into the house two firearms.

5) Before that arrest was pick up new cars which offer for sale.

6) Gustavo Gomez Valenzuela's §2255 should be heard, and relief granted, or in the alternative, this court will have declared open season on all law enforcement officers nationwide who perform their duty.

8) The timeliness standard of 28 U.S.C. § 2255(f) cannot be applied as controlling concerning claims of ineffective assistance of counsel.

7) Because of the lower court's interpretation of *Massaro v. United States*, 538 U.S. 500 (2003), a §2255 motion serves as a Federal defendant's direct appeal from an illegal sentence caused by the ineffective assistance of defense counsel. Therefore a procedural bar that denies review, where counsel was not appointed, is unconstitutional. The failure to appoint counsel side-stepped Congress's intent in 18 U.S.C. § 3006A. Which

demands that an indigent defendant be appointed counsel in all appeals, See 18 USC § 3006A(c).

Moreover, depriving Gustavo Gomez Valenzuela of review because of a procedural default would result in an unconstitutional deprivation of his due process right to direct appeal with the benefit of counsel, which is guaranteed by the Constitution's Sixth Amendment. The Supreme Court of the United States in *Buck v. Davis*, 137 S.Ct. 759 (2017), upheld its decision in *Martinez v. Ryan*, 566 U.S. 1 at 9, holding: "that when a state formally limits the adjudication of claims of ineffective assistance of trial counsel to collateral review, a prisoner may establish cause for procedural default if (1) the state courts did not appoint counsel in the initial review collateral proceeding; or 'appointed counsel in that proceeding, was ineffective under the standards of *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); and (2) the underlying claim is a substantial one, which is to say that, the claim has some merit's *Id.*, at 14, 132 S.Ct. 1309, 182 L.Ed.2d 272."

The merits in Gustavo Gomez Valenzuela's §2255 is self-evident. He presented the claim that he was deprived of his due process right to be heard at a fair, because of the ineffectiveness of his defense counsel. Counsel's failure not only violated Gustavo Gomez Valenzuela's right to counsel, but also his due process right to a fair trial where he could have been heard in his own defense.



Gustavo Gomez Valenzuela Shows that under the procedural default doctrine, if a prisoner "defaulted his federal claims in state courts pursuant to an independent and adequate state procedural rule, federal habeas review of the claims is barred unless the prisoner can demonstrate cause for the default and 'actual prejudice as result of the alleged violation of federal law'" *Coleman v. Thompson*, 501 U.S. 722, 750 (1991). In general, lack of an attorney and attorney error in state post conviction proceedings do not establish cause to excuse a procedural default. *id.* at 757, 111 S. Ct. at 2568.

In *Martinez*, The Supreme Court announced a narrow, equitable, and non-constitutional exception to *Coleman*'s holding (that ineffective assistance of collateral counsel cannot serve as cause to excuse a procedural default) in the limited circumstances where (1) a state requires a prisoner to raise ineffective-trial-counsel claims at an initial review collateral proceedings (2) the prisoner failed properly to raise ineffective-trial or court counsel claims in his state initial review collateral proceeding; (3) the prisoner did not have collateral counsel or his counsel was ineffective; and (4) failing to excuse the prisoner's procedural default would cause the prisoner to lose a substantial ineffective counsel claim. In such a case, the Supreme Court explained that there may be cause to excuse the procedural default of the ineffective counsel claim. *Martinez*, 132 S. Ct. at 1319. Subsequently, the Supreme Court extended *Martinez*'s rule to cases where state law technically permits ineffective

Counsel Claim on direct appeal but state procedure make it virtually impossible to actually raise ineffective Counsel Claims on direct appeal, See *Trevino v. Taltz*, 133 S.Ct., 918, 1918-21.

There can be no question that the federal Criminal Court System requires that Ineffective Assistance of Counsel Claims should be brought in collateral proceedings, not on direct appeal. Such Claim brought on direct appeal are presumptively dismissible, and virtually all will be dismissed. The reasons for this rule are also self evident. A factual record must be developed in and addressed by the district court in the first instance for ineffective review. Even if evidence is not necessary, at the very least Counsel accused of deficient performance can explain their reasonings and actions, and the district court can render its opinion on the merits of the Claim. An opinion by a district court is a valuable aid to appellate review for many reasons, not the least of which is that in most cases the district court is familiar with the proceedings and has observed Counsel's performance, in contrast, first hand. Thus, even if the record appears to need no further development, the claim will still be presented first to the district court in collateral proceedings, which should be instituted without delay, so the reviewing court can have the benefit of the district court's views. Therefore, the statutory right to appeal, that is a part of today's due process in the federal system, has been reduced to a right that no longer includes a right to appeal from a

Sixth Amendment claim of ineffective assistance of counsel.

Gustavo Gomez Valenzuela, claims that it is because he had no counsel during the preparation period in his First Tier collateral §2255 proceeding that serves a cause for his procedural default.

Wherefore, based on the foregoing, Gustavo Gomez Valenzuela, respectfully moves this court to find that cause "why the motion should not be dismissed as untimely" exists, and to order the government to show cause why Gustavo Gomez Valenzuela's requested relief should not be granted.

Respectfully Submitted on January 12, 2022 by

Gustavo Gómez Valenzuela  
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#### CERTIFICATE OF SERVICE

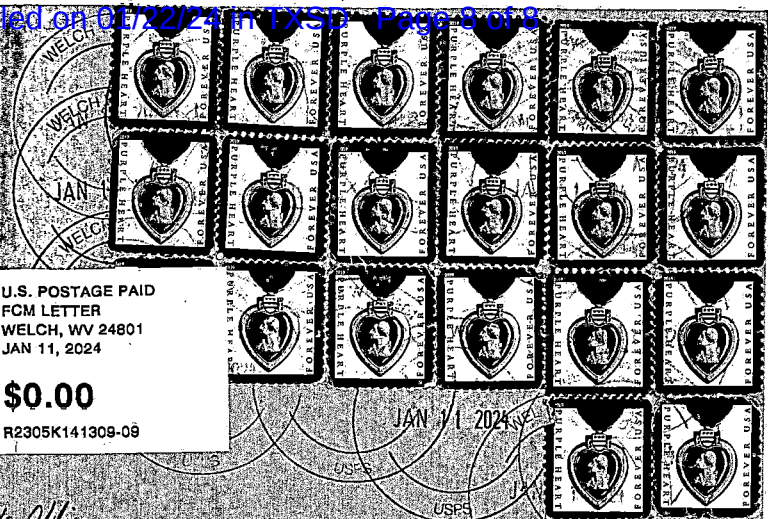
I do hereby certify that I have served a copy of this response on the Clerk of Court properly addressed, first class postage pre paid, and placed in the institution's mailing system as available to inmates, on January 12, 2024

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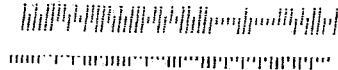
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